



Excise Tax Advisory

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NUMBER: 308.04.224

CONVERSION DATE: July 1, 1998

"ART WORK" DISTINGUISHED

Issued January 20, 1967

Is art work produced by artists for use by advertising agencies, printers, or similar business activities subject to Retail Sales Tax?

In one instance a commercial artist questioned assessment of Sales Tax upon income derived from preparation of sketches, designs, layouts, and other art work for advertising agencies, print shops, television broadcasters, and similar businesses. The taxpayer contended this activity to be the rendition of a professional service taxable under the "Service" classification.

Another situation arose when a taxpayer engaged in business as a printer found that one commercial artist charge his firm Sales Tax while a second firm did not. The taxpayer asked the Tax Commission for clarification.

With regard to both situations, the Tax Commission noted that in general, advertising and commercial artists receive their major compensation from the preparation of sketches, designs, layouts, drawings, and other art work for advertising agencies, printing shops, television broadcasters, and organizations planning advertising and publicity efforts. Clients engage such artists because of their professional knowledge and artistic skill, and the drawings which result are visual representations of the artists' ideas. The finished illustrations and designs are not the end product as they are invariably duplicated by photography, engraving, printing, or similar processes. It was further noted that the Code of Fair Practice for commercial artists provides that transfers of such art work are only of reproduction rights. The Tax Commission therefore ruled that charges for such art work are not sales at retail and that advertising or commercial artists engaged in these activities are subject to tax under the "Service and Other Activities" classification of the Business and Occupation Tax..

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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The Commission distinguished the foregoing from those instances in which a commercial artist may paint murals, portraits, or other finished work for consumers. Such activities are sales at retail and are subject to "Retailing" Business Tax and Retail Sales Tax. (Letter.)